

# SENATE MOTION

**MADAM PRESIDENT:**

**I move** that Engrossed House Bill 1001 be amended to read as follows:

- 1           Page 62, between lines 22 and 23, begin a new paragraph and
- 2           insert:
- 3           "SECTION 41. IC 6-9-36-3, AS ADDED BY P.L.214-2005,
- 4           SECTION 45, IS AMENDED TO READ AS FOLLOWS
- 5           [EFFECTIVE JULY 1, 2006]: Sec. 3. (a) The fiscal body of a county
- 6           described in section 1 of this chapter may adopt an ordinance to impose
- 7           an excise tax, known as the food and beverage tax, on those
- 8           transactions described in sections 4 and 5 of this chapter that occur
- 9           anywhere within the county.
- 10          (b) The following apply if the fiscal body of the county imposes a
- 11          tax under this chapter:
- 12           (1) The rate of the tax equals one percent (1%) of the gross retail
- 13           income on the transaction. **With respect to an excise tax**
- 14           **imposed under IC 6-9-40 by the development board (as**
- 15           **defined in IC 6-9-40-4) in a county described in section 1 of**
- 16           **this chapter, the tax is in addition to the food and beverage**
- 17           **tax imposed by the development board.** For purposes of this
- 18           chapter, the gross retail income received by the retail merchant
- 19           from such a transaction does not include the amount of tax
- 20           imposed on the transaction under IC 6-2.5, ~~or~~ this chapter, **or**
- 21           **IC 6-9-40.**
- 22           (2) The fiscal body shall immediately send a certified copy of the
- 23           ordinance to the commissioner of the department of state
- 24           revenue.
- 25           (3) The tax applies to transactions that occur after the last day of
- 26           the month that follows the month in which the ordinance was
- 27           adopted.
- 28           (4) The fiscal body may adopt an ordinance to rescind the tax.
- 29           The rescission of the tax takes effect after the last day of the
- 30           month that follows the month in which the ordinance to rescind
- 31           the tax is adopted. However, the fiscal body may not rescind the

1 tax if there are bonds outstanding or leases or other obligations  
2 for which the tax has been pledged under IC 36-7.5.".

3 Page 64, between lines 41 and 42, begin a new paragraph and  
4 insert:

5 "SECTION 43. IC 6-9-40 IS ADDED TO THE INDIANA CODE  
6 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
7 JULY 1, 2006]:

8 **Chapter 40. Northwest Indiana Regional Development**  
9 **Authority Food and Beverage Tax**

10 **Sec. 1. This chapter applies to an eligible county.**

11 **Sec. 2. The definitions in IC 6-9-12-1 and IC 36-1-2 apply**  
12 **throughout this chapter.**

13 **Sec. 3. As used in this chapter, "authority" refers to the**  
14 **northwest Indiana regional development authority established by**  
15 **IC 36-7.5-2-1.**

16 **Sec. 4. As used in this chapter, "development board" refers to**  
17 **the governing body appointed under IC 36-7.5-2-3 for the**  
18 **authority.**

19 **Sec. 5. As used in this chapter, "eligible county" has the**  
20 **meaning set forth in IC 36-7.5-1-11.**

21 **Sec. 6. (a) The development board may adopt a resolution to**  
22 **impose an excise tax, known as the food and beverage tax, on those**  
23 **transactions described in sections 9 and 10 of this chapter that**  
24 **occur anywhere within an eligible county.**

25 **(b) The rate of the tax imposed under this chapter equals one**  
26 **percent (1%) of the gross retail income on the transaction. With**  
27 **respect to an excise tax imposed in an eligible county under**  
28 **IC 6-9-36, the excise tax imposed by the development board is in**  
29 **addition to the food and beverage tax imposed by that county's**  
30 **fiscal body. For purposes of this chapter, the gross retail income**  
31 **received by the retail merchant from the transaction does not**  
32 **include the amount of tax imposed on the transaction under**  
33 **IC 6-2.5, IC 6-9-36, or this chapter.**

34 **Sec. 7. If the development board adopts a resolution under**  
35 **section 6 of this chapter, the development board shall immediately**  
36 **send a certified copy of the resolution to the commissioner of the**  
37 **department of state revenue.**

38 **Sec. 8. If the development board adopts a resolution under**  
39 **section 6 of this chapter, the food and beverage tax applies to**  
40 **transactions that occur after the last day of the month that**  
41 **succeeds the month in which the resolution was adopted.**

42 **Sec. 9. Except as provided in section 11 of this chapter, a tax**  
43 **imposed under section 6 of this chapter applies to any transaction**  
44 **in which food or beverage is furnished, prepared, or served:**

45 **(1) for consumption at a location, or on equipment, provided**  
46 **by a retail merchant;**

47 **(2) in the county or municipality, or both, in which the tax is**  
48 **imposed; and**

49 **(3) by a retail merchant for consideration.**

50 **Sec. 10. Transactions described in section 9(1) of this chapter**

1 include transactions in which food or beverage is:

- 2 (1) served by a retail merchant off the merchant's premises;
- 3 (2) food sold in a heated state or heated by a retail merchant;
- 4 (3) two (2) or more food ingredients mixed or combined by
- 5 a retail merchant for sale as a single item (other than food
- 6 that is only cut, repackaged, or pasteurized by the seller, and
- 7 eggs, fish, meat, poultry, and foods containing these raw
- 8 animal foods requiring cooking by the consumer as
- 9 recommended by the federal Food and Drug Administration
- 10 in chapter 3, subpart 3-401.11 of its Food Code so as to
- 11 prevent food borne illnesses); or
- 12 (4) food sold with eating utensils provided by a retail
- 13 merchant, including plates, knives, forks, spoons, glasses,
- 14 cups, napkins, or straws (for purposes of this subdivision, a
- 15 plate does not include a container or packaging used to
- 16 transport the food).

17 **Sec. 11.** The food and beverage tax under this chapter does not  
 18 apply to the furnishing, preparing, or serving of any food or  
 19 beverage in a transaction that is exempt, or to the extent exempt,  
 20 from the state gross retail tax imposed by IC 6-2.5.

21 **Sec. 12. (a)** The tax shall be imposed, paid, and collected in the  
 22 same manner that the state gross retail tax is imposed, paid, and  
 23 collected under IC 6-2.5. However, the return to be filed for the  
 24 payment of the taxes may be made on separate returns or may be  
 25 combined with the return filed for the payment of the state gross  
 26 retail tax, as prescribed by the department of state revenue

27 (b) The amounts received from a tax imposed under section 6  
 28 of this chapter shall be paid monthly by the treasurer of state to the  
 29 secretary-treasurer of the development board upon warrants  
 30 issued by the auditor of state.

31 (c) Each month the department of state revenue shall provide  
 32 the secretary-treasurer of the development board with a statement  
 33 identifying the taxes that were initially collected in each eligible  
 34 county.

35 **Sec. 13. (a)** If a tax is imposed under section 6 of this chapter,  
 36 the development board shall establish a food and beverage tax  
 37 fund.

38 (b) The development board shall deposit in the fund all  
 39 amounts received by the development board under this chapter.  
 40 Money deposited into the fund must be paid into a separate  
 41 account for each eligible county. The amount to be paid to a  
 42 particular county's account equals that part of the total food and  
 43 beverage taxes being distributed that were initially imposed and  
 44 collected from within that county.

45 (c) Any money earned from the investment of money in the  
 46 fund becomes a part of the fund.

47 **Sec. 14.** Food and beverage taxes allocated to an eligible  
 48 county's account within the food and beverage fund must be used

by the development board:

- (1) for land acquisition and capital improvements in the county that enhance tourism development in the county; or
- (2) for the pledge of money to bonds, leases, or other obligations under IC 36-7.5-4-5 to finance a land acquisition or capital improvement under subdivision (1).

**Sec. 15. With respect to bonds, leases, or other obligations for which a pledge has been made under section 14 of this chapter, the general assembly covenants with the holders of these obligations that:**

- (1) this chapter will not be repealed or amended in any manner that will adversely affect the imposition or collection of the tax imposed under this chapter; and
- (2) this chapter will not be amended in any manner that will change the purpose for which revenues from the tax imposed under this chapter may be used;

**as long as the payment of any of those obligations is outstanding."**

Page 199, between lines 32 and 33, begin a new paragraph and insert:

"SECTION 76. IC 36-7.5-4-5, AS ADDED BY P.L.214-2005, SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. (a) The development authority may secure bonds issued under this chapter by a trust indenture between the development authority and a corporate trustee, which may be any trust company or national or state bank within Indiana that has trust powers.

(b) The trust indenture may:

- (1) pledge or assign **food and beverage taxes received under IC 6-9-40**, revenue received by the development authority, amounts deposited in the development authority fund, and lease rentals, receipts, and income from leased projects, but may not mortgage land or projects;
- (2) contain reasonable and proper provisions for protecting and enforcing the rights and remedies of the bondholders, including covenants setting forth the duties of the development authority and development board;
- (3) set forth the rights and remedies of bondholders and trustees; and
- (4) restrict the individual right of action of bondholders.

(c) Any pledge or assignment made by the development authority under this section is valid and binding in accordance with IC 5-1-14-4 from the time that the pledge or assignment is made, against all persons whether they have notice of the lien or not. Any trust indenture by which a pledge is created or an assignment made need not be filed or recorded. The lien is perfected against third parties in accordance with IC 5-1-14-4.

- 1           **(d) A pledge or assignment of food and beverage taxes**
- 2           **received under IC 6-9-40 must be for a purpose permitted by**
- 3           **IC 6-9-40-14.".**
- 4           Renumber all SECTIONS consecutively.  
            (Reference is to EHB 1001 as printed February 24, 2006.)

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Senator LANDSKE